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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,640

05/30/2006

Jean-Pierre Dath

F-857 (31223.00074)

1992

25264 7590 03/04/2009

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EXAMINER

BULLOCK, IN SUK C

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/524,640	Applicant(s) DATH ET AL.	
	Examiner IN SUK BULLOCK	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 11-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment to claims 1-6, 12, 13, 15, 16, 21, and 22 is hereby acknowledged.

No new claim has been added and no additional claim has been canceled. Thus, claims 1-7 and 11-22 are currently pending in this application.

Objection to claim 13 and rejection of claims 1-7 and 11-22 under 112, 2nd paragraph are withdrawn in view of the amendment.

The following is a new ground of rejection based upon the amendment filed.

Terminal Disclaimer

The terminal disclaimer filed on 11/24/2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application Number 10/569,240 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7 and 11-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,849,573 to Kaeding (hereinafter "Kaeding") in view of EP 0921181 (hereinafter "EP").

Kaeding discloses a process for converting a feed comprising alcohol (such as methanol), ether (such as dimethyl ether), and diluent steam to light olefins (ethylene, propylene, butene) over a zeolite catalyst such as ZSM-5 (MFI) and ZSM-11 (MEL). See col. 2, lines 43-52; col. 3, lines 4-23; and col. 6, lines 23-25. The zeolite catalyst has a silica to alumina mole ratio of at least 140, preferably 298 to 2000 (col. 3, lines 24-32). Natural zeolites may be converted to the desired type of zeolite catalyst by treatments including steaming and alumina extraction (col. 6, lines 17-19). The conversion process is conducted at a WHSV of 0.5 to 10, a pressure of 1 to 100

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atmospheres (101-10,133 kPa), and a temperature of 350° to 600° C (col. 8, lines 24-44).

The difference between Kaeding and the claimed invention is that Kaeding discloses Si/Al mole ratio of at least 140 whereas the claimed invention calls for a ratio of 250 to 500 for a MFI catalyst and 150 to 800 for a MEL catalyst.

However, overlapping ranges are prima facie evidence of obviousness. It would have been obvious to one having ordinary skill in the art to have selected the portion of Kaeding's Si/Al mole ratio that corresponds to the claimed range. *In re Malagari*, 182 USPQ 549 (CCPA 1974).

Kaeding does not disclose the particulars of steaming and extracting aluminum from the catalyst by contacting the catalyst with a complexing agent to obtain a catalyst having the desired Si/Al ratio.

The EP reference is relied upon to show that a steam treatment of a catalyst reduces an amount of tetrahedral aluminum in the crystalline silicate framework by forming alumina. Following the extraction steam treatment, the extraction is performed to de-aluminate the catalyst by treating with a complexing agent (pages 6-7 [0043], [0051-0052]).

Therefore, it would have been obvious to one having ordinary skill in the art that the disclosure of Kaeding to steam and dealuminate zeolite catalysts to obtain catalysts having desired Si/Al mole ratio would have included the known step of deauminating the catalyst by contacting with a complexing agent as evidenced by EP reference.

Response to Arguments

Applicants' arguments with respect to claims 1-7 and 11-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to IN SUK BULLOCK whose telephone number is (571)272-5954. The examiner can normally be reached on Monday - Friday 6:00-2:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/In Suk Bullock/
Examiner, Art Unit 1797